

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

J.C. WHITNEY & CO., a Delaware)	
corporation, d/b/a CarParts.com,)	
)	Case No. 08-cv-03565
<i>Plaintiff,</i>)	
)	Judge Samuel Der-Yeghiayan
v.)	
)	Magistrate Judge Nolan
U.S. AUTO PARTS NETWORK, INC., a)	
Delaware corporation,)	JURY TRIAL DEMANDED
)	
<i>Defendant.</i>)	

INITIAL STATUS REPORT

Pursuant to Fed.R.Civ.P. 26(f), a telephonic conference of the parties was held on July 10, 2008, and attended by:

Mark E. Wiemelt, for the Plaintiff J.C. Whitney & Co.; and

Gregory S. Tamkin, for the Defendant U.S. Auto Parts Network, Inc.

The attorney of record for Plaintiff J.C. Whitney & Co. is Mark E. Wiemelt (lead trial counsel).

The attorney of record for Defendant U.S. Auto Parts Network, Inc. is Gregory S. Tamkin (lead trial counsel).

1. Nature of the Claims and Counterclaims.

This is an action for service mark infringement, false advertising and unfair competition under the laws of the United States, as provided for by Title 15 U.S.C. § 1114 (registered mark) & 1125(a)(§ 43(a) of the Lanham Act); service mark infringement and unfair competition under the common law of the State of Illinois;

consumer fraud under the Illinois Consumer Fraud and Deceptive Trade Practices Act, 815 ILCS § 505/1, *et seq.*; and deceptive trade practices under the Illinois Deceptive Trade Practices Act, 815 ILCS § 510/1, *et seq.*

2. Relief Sought by Plaintiff.

Plaintiff J.C. Whitney prays that the Court enter judgment in its favor and against Defendant as follows:

- i. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendant from operating under or using, in any facet, a logo confusingly similar to J.C. Whitney's registered Mark;
- ii. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendant from operating under or using, in any facet, J.C. Whitney's marks, or any similar tradenames, service marks, logos, titles or slogans;
- iii. Temporarily restraining and preliminarily and permanently enjoining and prohibiting Defendant from using, adopting, and displaying J.C. Whitney's colors, designs, shapes, patterns, and lettering similar to the logos of J.C. Whitney;
- iv. Awarding J.C. Whitney all profits derived from and all damages suffered by J.C. Whitney by reason of Defendant's wrongful acts, or in the alternative, such statutory damages as may be allowed under the Federal Trademark Act;
- v. Awarding J.C. Whitney an increase in the award of damages up to three times the amount found for deliberate and willful trademark infringement and unfair competition by the Defendant pursuant to 15 U.S.C. § 1117(a);
- vi. Awarding J.C. Whitney its costs and reasonable attorneys' fees incurred as a result of the Defendant's actions;
- vii. Awarding J.C. Whitney exemplary damages to punish Defendant and deter future conduct; and
- viii. Granting such further relief as this Court deems just and proper.

3. Names of Parties Not Served.

None.

4. Principal Legal Issues.

The principal legal issues include the validity and/or protectability of Plaintiff's marks, and the likelihood of confusion caused by Defendant's use of a search engine keyword program and wording on Defendant's eBay hosted website.

5. Principal Factual Issues.

The principal factual issues include the parties' uses of their respective marks in connection with their respective services, the likelihood of confusion caused by Defendant's use of a search engine keyword program and wording on Defendant's eBay hosted website, and damages.

6. List of pending motions and brief summary of bases for motions.

Agreed Motion to For Extension of Time to File Responsive Pleading.

7. Description of discovery requested and exchanged.

None.

8. Type of discovery needed.

The parties anticipate the need for written discovery and document production, as well as depositions of fact and expert witnesses. The parties do not propose any modifications to the limitations on discovery imposed by the Federal Rules of Civil procedure or by local rule.

9. Agreed dates for: Rule 26 disclosures, fact discovery completion, expert discovery completion (including dates for the delivery of expert reports), filing of dispositive motions, filing of a final pretrial order.

The parties propose the following dates:

1. Rule 26(a)(1) Disclosures: August 16, 2008
2. Completion of Non-Expert Discovery: December 31, 2008
3. Reports from Retained Experts Due: February 15, 2009
4. Completion of Expert Discovery: April 15, 2009

4. Filing of Dispositive Motions: May 15, 2009

5. Filing of a Final Pretrial Order: July 31, 2009

10. Estimation of when the case will be ready for trial.

The parties anticipate the case will be ready for trial by August 31, 2009.

11. Probable length of trial.

The parties anticipate the trial will probably last 4-5 days.

12. Whether a request has been made for a jury trial.

A timely request for a jury trial has been made.

13. Whether there have been settlement discussions and if so the outcome of those discussions.

The parties have begun settlement discussions.

14. Whether the parties consent to proceed before a Magistrate Judge.

The parties have not agreed to consent to proceed before a Magistrate Judge.

Dated: July 17, 2008

J.C. WHITNEY & CO.

By: s/Mark E. Wiemelt

One of its attorneys

Mark E. Wiemelt – IL. Atty.#: 06208213

Law Offices of Mark E. Wiemelt, P.C.

10 South LaSalle Street

Suite 3300

Chicago, IL 60603

Ph: 312-372-7664

Fax: 312-372-6568

Email: mark@wiemeltlaw.com

U.S. AUTO PARTS NETWORK, INC.

By: /s/ Martin B. Carroll

One of its Attorneys

Martin B. Carroll

Kelly Smith-Haley

Fox, Hefter, Swibel, Levin & Carroll, LLP
200 West Madison, Suite 3000
Chicago, Illinois 60606
Ph: 312-224-1200
Fax: 312-224-1201
Email: mcarroll@fhslc.com

Gregory S. Tamkin
Dorsey & Whitney LLP
370 Seventeenth Street, Suite 4700
Denver, CO 80202-5647
Ph. 303-629-3438
Fax 303-629-3450
Email: Tamkin.Greg@dorsey.com